

Appl. No. 10/655,836
Any. Docket No. CM2780
Amdt. Dated 10/20/2005
Reply to Office Action of 08/02/2005
Customer No. 27752

REMARKS/ARGUMENTS

Claims 1 to 8 are currently being considered. Claim 9 has been canceled without prejudice. Claims 10 to 20 have been withdrawn from consideration.

Claim 1, from which Claims 2-8 ultimately depend, has been amended to clearly and specifically exclude antiperspirant actives. As discussed below, it is submitted that this amendment is supported by canceled Claim 9 and the disclosure at page 10 line 26 to page 11 line 2. Entry of the amendment is therefore requested.

Restriction Requirement-Confirmation of Election of Group I (Claims 1-9) without Traverse

In the instant Office Action the Examiner has noted that there are four separate inventions and requested that Applicants restrict the instant application to one of these. The Examiner then further noted that in a telephone conversation with Mina Matthews on June 19, 2005, a provisional election without traverse was made of the invention of Group I (Claims 1-9). Applicants' are confirming this provisional election without traverse of the invention of Group I, namely Claim 1-9. Consequently Claims 10-20 are withdrawn from further consideration as being directed to the non-elected inventions.

Rejections Under 35 U.S.C. § 112

Claims 1 to 8 stand rejected under 35 USC 112 first paragraph as being nonenabling, by not including the limitation that the compositions do not specifically exclude the antiperspirant materials listed at page 10, line 25 to page 11 line 2. Applicants are canceling Claim 9 and incorporating the limitations thereof into Claim 1. This means that Claim 1, and therefore dependant Claims 2 to 8, do now specifically exclude the antiperspirant materials listed at page 10, line 25 bridging page 11, line 2. It is therefore respectfully submitted that Claims 1-8 are enabled under 35 USC 112 and that the rejection be withdrawn.

Rejections Under 35 U.S.C. § 102

U.S. 5,599,473 (Crutzen et al)

Claims 1-4 and 6-9 stand rejected under 35 U.S.C. § 102 (b) over U.S. 5,599,473 (hereafter Crutzen '473) for reasons of record at page 5 of the Office Action. Claim 9 has been canceled and this rejection as applied to Claim 9 is therefore moot.

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Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

For a claim to be anticipated under 35 U.S.C. § 102(b) all of the elements of that claim must be found in the prior art reference, in this instance Crutzen '473. However, a review of present Claims 1-4 and 6-8 will clearly show this is not the case, as not all elements of Claims 1-4 and 6-8 are found in Crutzen '473. Claim 1 requires "a non-polymeric, crystalline, hydroxyl-containing structuring agent, which can crystallize to form a thread-like structuring network throughout liquid matrices." There is simply no disclosure of this essential claim element in Crutzen '473. The Examiner is correct in pointing out that Crutzen '473 discloses fatty hydroxyesters. However, Crutzen '473 does not disclose the essential claim element, namely "a non-polymeric, crystalline, hydroxyl-containing structuring agent, which can crystallize to form a thread-like structuring network throughout liquid matrices." Crutzen '473 fails to teach all the essential claim elements of Claims 1-4 and 6-8.

Furthermore, amended Claim 1, and consequently dependent Claims 2-4 and 6-8, all require that the structuring system be free of antiperspirant actives. There is no disclosure, or suggestion, or teaching for that matter, of such a claim element in Crutzen '473. Furthermore, the Office Action did not point to any part of Crutzen '473 where this claim limitation is disclosed, mentioned, suggested or taught. Since Crutzen '473 fails to teach all the elements of amended Claim 1, and consequently dependent Claims 2-4, and 6-8, it does not anticipate the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

DE 4,009,534 (Henkel)

Claims 1-7 and 9 stand rejected under 35 U.S.C. § 102 (b) over DE 4,009,534 (hereafter Henkel) for reasons of record at page 5 of the Office Action. As noted previously, Claim 9 has been canceled and this rejection as applied to Claim 9 is therefore moot.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

For a claim to be anticipated under 35 U.S.C. § 102(b) all of the elements of that claim must be found in the prior art reference, in this instance Henkel. However, a review of amended Claims 1-7 will clearly show this is not the case, as not all elements of Claims 1-7 are found in Henkel. Amended Claim 1, and consequently dependent Claims 2-7, all require that the structuring system be free of antiperspirant actives. There is no disclosure, or suggestion, or

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teaching for that matter, of such a claim element in Henkel. Furthermore, the Office Action did not point to any part of Henkel where this claim limitation is disclosed, mentioned, suggested or taught. Since Henkel fails to teach all the elements of amended Claim 1, and consequently dependent Claims 2-7, it does not anticipate the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

U.S. 5,419,842 (Crutzen et al)

Claims 1, 3, 4 and 7-9 stand rejected under 35 U.S.C. § 102 (b) over U.S. 5,419,842 (hereafter Crutzen '842) for reasons of record at page 5 of the Office Action. As noted previously, Claim 9 has been canceled and this rejection as applied to Claim 9 is therefore moot.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

For a claim to be anticipated under 35 U.S.C. § 102(b) all of the elements of that claim must be found in the prior art reference, in this instant Crutzen '842. However, a review of present Claims 1, 3, 4 and 7-9 will clearly show this is not the case, as not all elements of Claims 1, 3, 4 and 7-9 are found in Crutzen '842. Claim 1 requires "a non-polymeric, crystalline, hydroxyl-containing structuring agent, which can crystallize to form a thread-like structuring network throughout liquid matrices". There is simply no disclosure of this essential claim element in Crutzen '842. The Examiner is correct in pointing out that Crutzen '842 discloses a specific fatty ester which contains hydroxyl groups, however Crutzen 842 does not disclose the essential claim element "a non-polymeric, crystalline, hydroxyl-containing structuring agent, which can crystallize to form a thread-like structuring network throughout liquid matrices." Crutzen '842 fails to teach all the essential claim elements of Claims 1, 3, 4 and 7-9.

Furthermore, amended Claim 1, and consequently dependant Claims 3, 4 and 7-9, all require that the structuring system be free of antiperspirant actives. There is no disclosure, or suggestion, or teaching for that matter, of such a claim element in Crutzen '842. Furthermore, the Office Action did not point to any part of Crutzen '842 where this claim limitation is disclosed, mentioned, suggested or taught. Since Crutzen '842 fails to teach all the elements of amended Claim 1, and consequently dependent Claims 3, 4 and 7-9, it does not anticipate the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

CONCLUSION

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Applicants have made an earnest effort to place their application in proper form and to distinguish their invention from the applied prior art.

WHEREFORE, Applicants respectfully request entry of the amendments presented, reconsideration of this application, withdrawal of the rejection under 35 USC 112, and withdrawal of the rejections under 35 U.S.C. §102 and allowance of Claims 1-8..

Respectfully Submitted,

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